

Claims 1, 2, 4, 9-11 and 13 and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,299,136 in view of either of Haight (U.S. Patent No. 1,159,583) or Sickler (U.S. Patent No. 4,193,433). Presumptively, the rejection also includes claims 5-8 and 14-17. The rejection is respectfully traversed.

In determining double patenting, the issue is whether any claim of the application defines merely an obvious variation of an invention claimed in the earlier patent or application. It does not prohibit a later claiming of subject matter that is disclosed but not claimed in the earlier patent or application. Double patenting is concerned with attempts to "claim" related subject matter twice. In re Gibbs, 437 F.2d 486, 168 USPQ 578 (CCPA 1971). In short, the issue in addressing the judicially created doctrine of obviousness-type double patenting is whether any claim of the application defines merely an obvious variation of the invention claimed in the earlier patent.

U.S. Patent No. 6,299,136 is directed to a claw hammer head that includes a body, a neck and a claw as recited in claim 1 by example. Claim 1 recites that the body is disposed along and about a horizontal axis, a vertical axis and a transverse axis which intersect one another perpendicularly at a point of intersection. Claim 1 recites that the neck is connected to and extends forwardly of the body generally along and about the horizontal axis with a neck terminating in a face portion sized and adapted to impact a target. Claim 1 further recites that the claw has a high brow portion disposed generally vertically apart from an intersection of the horizontal and transverse axis and a claw portion positioned generally rearwardly of the body and integrally formed with the high brow portion to define a fulcrum surface curving about the point of intersection. Further, claim 1 recites that the fulcrum surface has a first rocker portion with a first radius, a second rocker portion with a second radius and a third rocker portion with a third radius with the second rocker portion being disposed between the first and third rocker portions and with the second radius being larger than the first and third radii.

Claims 1, 5, 10 and 13 are directed to a nail-setting claw hammer head that includes a main body and a nail-head receiving recess. By contrast, the 136 patent does not claim a nail-head receiving recess.

It is respectfully submitted that the rejection must be withdrawn because the claims of the instant application do not claim related subject matter twice relative to the patent.

Furthermore, the United States Patent and Trademark Office is obligated to clearly set forth the basis of an obviousness-type double-patenting rejection. Under MPEP 804 II. B. 1., it states:

Any obviousness-type double patenting rejection should make clear:

(A) The differences between the inventions defined in the **conflicting claims**--a **claim** in the patent compared to a **claim** in the application; and

(B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the **claim in issue** is an obvious variation of the invention defined in a **claim** in the patent.

It is respectfully submitted that the rejection is also improper because the U.S.P.T.O. fails to make clear the obviousness-type double patenting rejection, particularly subparagraphs (A) and (B) above. Specifically, nothing in the Office Action compares a claim in the patent with the claims of the instant application. As a result, the U.S.P.T.O. fails to establish a *prima facie* case of obviousness-type double patenting.

Additionally, the present application is a continuation-in-part application of U.S. Patent No. 6,299,136. The new matter introduced in the continuation-in-part application specifically addresses the nail-head receiving recess which is not claimed in the patent.

Withdrawal of the rejection is respectfully requested.

Claims 1, 2, 4, 9-11 and 13 and 18 are rejected under 35 U.S.C. 103(a) as unpatentable over Green (U.S. Patent No. 1,934,706) in view of either of Haight (U.S. Patent No. 1,159,583) or Sickler (U.S. Patent No. 4,193,433). Presumptively, the rejection also includes claims 5-8 and 14-17. The rejection is respectfully traversed.

Green teaches a claw hammer that includes a pair of claws with a recess facing the claws and formed in a neck of hammer head for receiving a head of a nail. As

shown in Figure 1, it appears that the head-receiving recess is partially hemispherical in configuration.

Haight teaches a hammer having a claw portion provided with a longitudinal slot forming a double claw for nail drawing. Also, the hammer includes a flat seat disposed at an angle formed by the junction of a shank and the claw of the hammer. A recess in the claw receive the head of the nail resting on the seat.

Sickler teaches a nail holding hammer that includes a seat surface facing a pair of curved claws. The seat surface substantially parallels a handle of the hammer. A nail head is received against the seat surface while a mid portion of the nail is obligingly received between the claws of the hammer.

Claims 1 and 10 are directed to nail-setting claw hammer heads that include a main body having a nail-head receiving recess formed therein. Claims 1 and 10 recite that the nail-head receiving recess is defined by a nail-head receiving recess surface extending into the rear surface of the main body and is positioned to face a V-shaped slot. Further, claims 1 and 10 recites that the nail-head receiving recess is one of partially conically shaped and partially pyramidally shaped and an imaginary line representing an innermost portion of the nail-head receiving recess surface relative to the rear surface of the main body inclines at a fixed angle relative to the vertical axis.

It is respectfully submitted that none of the applied art, alone or in combination, teaches or suggests the features of claims 1 and 10. Specifically, it is respectfully submitted that the applied art fails to teach or suggest a nail-head receiving recess being one of partially conically shaped and partially pyramidally shaped with an imaginary line representing an innermost portion of a nail-head receiving recess surface relative to a rear surface of a main body inclining at a fixed angle relative to a vertical axis. Thus, it is respectfully submitted that claims 1 and 10 are allowable over the applied art.

Claims 5 and 13 are directed to a nail-setting claw hammer heads, each having a main body with a rear surface including a nail-head receiving recess formed therein. Claims 5 and 13 recite that the nail-head receiving recess has a curved surface extending into the rear surface of the main body and curving about a conical axis

extending generally parallel with a vertical axis and a flat surface intersecting the curved surface.

It is respectfully submitted that none of the applied art, alone or in combination, teaches or suggests the features of claims 5 and 13. Specifically, it is respectfully submitted that the applied art fails to teach or suggest a nail-head receiving recess having a curved surface extending into a rear surface of the main body and curving about a conical axis extending generally parallel with a vertical axis and a flat surface intersecting the curved surface. Thus, it is respectfully submitted that claims 5 and 13 are allowable over the applied art.

Claims 2, 4 and 9 depend from claim 1 and include all of the features of claim 1. Claims 6-8 depend from claim 5 and include all of the features of claim 5. Claims 11 and 18 depend from claim 10 and include all of the features of claim 10. Claims 14-17 depend from claim 13 and include all of the features of claim 13. Thus, the dependent claims are allowable at least for the reasons the independent claims are allowable as well as for the features they recite.

In short, none of the applied art teaches or suggests a nail-head receiving recess with a curved, inwardly-ramping surface defining such recess.

Withdrawal of the rejection is respectfully requested.

In view of the foregoing, reconsideration of the application and allowance of the pending claims are respectfully requested. Should the Examiner believe anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' representative at the telephone number listed below.

Should additional fees be necessary in connection with the filing of this paper or if a Petition for Extension of Time is required for timely acceptance of the same, the

Commissioner is hereby authorized to charge Deposit Account No. 18-0013 for any such fees and Applicant(s) hereby petition for such extension of time.

Respectfully submitted,

Date: May 22, 2003

By:



~~David T. Nikaido~~  
Reg. No. 22,663

Carl Schaukowitch  
Reg. No. 29,211

**RADER, FISHMAN & GRAUER PLLC**

1233 20<sup>th</sup> Street, N.W. Suite 501  
Washington, D.C. 20036  
Tel: (202) 955-3750  
Fax: (202) 955-3751  
Customer No. 23353

Enclosure(s):      Appendix I (Marked-Up Version of Amended Claims)  
                             Petition for Extension of Time (2 months)

DC121943

**APPENDIX I****(MARKED-UP VERSION OF AMENDED CLAIMS)**

1. (Thrice Amended) A nail-setting claw hammer head, comprising:

a main body disposed along and about a horizontal axis, a vertical axis and a transverse axis which intersect one another perpendicularly at a point of intersection to define a center of mass, the main body having a top surface and a rear surface with the rear surface including a nail-head receiving recess formed therein; and a claw connected to the rear surface of the main body at a first end and forming a fulcrum surface with the top surface, the claw curving about the point of intersection and disposed apart from the rear surface, the claw terminating at a second end opposite the first end with a pair of claw sections defining a V-shaped slot therebetween, the nail-head receiving recess defined by a nail-head receiving recess surface extending into the rear surface of the main body and being positioned to face the V-shaped slot, wherein the nail-head receiving recess is one of partially conically shaped and partially pyramidally shaped and an imaginary line representing an innermost portion of the nail-head receiving recess surface relative to the rear surface of the main body inclines at a fixed angle relative to the vertical axis. *N/m*

2. (Twice Amended) A nail-setting claw hammer head according to claim

1, wherein the nail-head receiving recess is positioned vertically on the ~~rear face~~ rear surface of the main body relative to the curvature of the claw so that ~~the~~ a longitudinal axis of a nail is substantially parallel to the horizontal axis and substantially perpendicular to the transverse axis and the vertical axis of the main body when a shank of the nail is held by the V-shaped slot in the claw and a head of the nail is ~~held~~ received by the nail-head receiving recess.

4. (Twice Amended) A nail-setting claw hammer head according to claim

1, wherein the partially conically shaped nail-head receiving recess ~~has~~ is defined by a nail-head receiving recess curved surface curving about a conical axis extending

generally parallel with the vertical axis and a flat surface intersecting the curved surface.

5. (Twice Amended) A nail-setting claw hammer head , comprising:

a main body disposed along and about a horizontal axis, a vertical axis and a transverse axis which intersect one another perpendicularly at a point of intersection to define a center of mass, the main body having a top surface and a rear surface with the rear surface including a nail-head receiving recess formed therein; and a claw connected to the rear surface of the main body at a first end and forming a fulcrum surface with the top surface, the claw curving about the point of intersection and disposed apart from the rear surface, the claw terminating at a second end opposite the first end with a pair of claw sections defining a V-shaped slot therebetween, the nail-head receiving recess being positioned to face the V-shaped slot,

wherein the nail-head receiving recess has a curved surface extending into the rear surface of the main body and curving about the longitudinal a conical axis extending generally parallel with the vertical axis and a flat surface intersecting the curved surface and the flat surface is disposed between the curved surface and the point of intersection.

10. (Thrice Amended) A nail-setting claw hammer head for holding a conventional nail having a shank portion and a nail head portion connected to the shank portion, the nail-setting claw hammer head comprising:

a main body disposed along and about a horizontal axis, a vertical axis and a transverse axis which intersect one another perpendicularly at a point of intersection to define a center of mass, the main body having a front surface, a top surface and a rear surface with the rear surface including a nail-head receiving recess formed therein and defined by a nail-head receiving recess surface extending into the rear surface of the main body;

an impact member connected to and projecting from the front surface, the

impact member having a neck and a hammer face; and

a claw connected to the rear surface of the main body at a first end and forming a fulcrum surface with the top surface, the claw curving about the point of intersection and disposed apart from the rear surface, the claw terminating at a second end opposite the first end with a pair of claw sections defining a V-shaped slot therebetween, the nail-head receiving recess positioned to face the V-shaped slot such that the nail-head receiving recess is sized and adapted to receive the nail head portion of the nail and the V-shaped slot is sized and adapted to receive the shank portion of the nail in order to wedge the shank portion therein,

wherein the nail-head receiving recess is one of partially conically shaped and partially pyramidally shaped and an imaginary line representing an innermost portion of the nail-head receiving recess surface relative to the rear surface of the main body inclines at a fixed angle relative to the vertical axis. <sup>pm</sup>

13. (Twice Amended) A nail-setting claw hammer head for holding a conventional nail having a shank portion and a nail head portion connected to the shank portion, the nail-setting claw hammer head comprising:

a main body disposed along and about a horizontal axis, a vertical axis and a transverse axis which intersect one another perpendicularly at a point of intersection to define a center of mass, the main body having a front surface, a top surface and a rear surface with the rear surface including a nail-head receiving recess formed and defined by a nail-head receiving recess surface extending into the rear surface of the main body;

an impact member connected to and projecting from the front surface, the impact member having a neck and a hammer face; and

a claw connected to the rear surface of the main body at a first end and forming a fulcrum surface with the top surface, the claw curving about the point of intersection and disposed apart from the rear surface, the claw terminating at a second end opposite the first end with a pair of claw sections defining a V-shaped slot therebetween, the nail-head receiving recess positioned to face the V-shaped slot such



that the nail-head receiving recess is sized and adapted to receive the nail head portion of the nail and the V-shaped slot is sized and adapted to receive the shank portion of the nail in order to wedge the shank portion therein, wherein the nail-head receiving recess surface has a curved surface portion curving about a conical axis extending generally parallel with the vertical axis and a flat surface portion intersecting the curved surface portion.